



Reprinted  
April 10, 2003

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## ENGROSSED HOUSE BILL No. 1655

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DIGEST OF HB 1655 (Updated April 9, 2003 4:56 PM - DI 108)

**Citations Affected:** IC 23-2; IC 24-4.8; noncode.

**Synopsis:** Financial institutions. Restricts certain lending acts and practices. Establishes the mortgage fraud unit under the attorney general. Increases the bond requirements and certain fees for loan brokers. Provides that the securities commissioner may issue certain remedial orders against loan brokers. Allocates fee revenue to the housing finance authority and the mortgage fraud unit for education and enforcement activities. Appropriates seventy-five thousand dollars to conduct a study of mortgage foreclosure rates in Indiana. Provides limits on assignee liability.

**Effective:** July 1, 2003.

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### Bardon, Burton, Day, Ruppel

(SENATE SPONSORS — CLARK, LANANE, DROZDA)

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January 21, 2003, read first time and referred to Committee on Financial Institutions.  
February 27, 2003, amended, reported — Do Pass.  
March 3, 2003, read second time, amended, ordered engrossed.  
March 4, 2003, engrossed. Read third time, passed. Yeas 89, nays 9.

#### SENATE ACTION

March 13, 2003, read first time and referred to Committee on Insurance and Financial Institutions.  
March 31, 2003, amended, reported favorably — Do Pass.  
April 9, 2003, read second time, amended, ordered engrossed.

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EH 1655—LS 7174/DI 108+



Reprinted  
April 10, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1655

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A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 23-2-5-3, AS AMENDED BY P.L.115-2001,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]: Sec. 3. (a) As used in this chapter, "certificate of  
4 registration" means a certificate issued by the commissioner  
5 authorizing an individual to engage in origination activities on behalf  
6 of a licensee.  
7 (b) As used in this chapter, "creditor" means a person:  
8 (1) that loans funds of the person in connection with a loan; and  
9 (2) to whom the loan is initially payable on the face of the note or  
10 contract evidencing the loan.  
11 (c) As used in this chapter, "license" means a license issued by the  
12 commissioner authorizing a person to engage in the loan brokerage  
13 business.  
14 (d) As used in this chapter, "licensee" means a person that is issued  
15 a license under this chapter.  
16 (e) As used in this chapter, "loan broker" means any person who, in  
17 return for any consideration from any person, promises to procure a

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loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for **the Indiana housing finance authority**, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development;

(3) any insurance company; ~~or~~

(4) any person arranging financing for the sale of the person's product; **or**

**(5) any community development corporation (as defined in IC 4-4-28-2).**

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means establishing the terms or conditions of a loan with a borrower or prospective borrower.

(h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(i) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

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SECTION 2. IC 23-2-5-5, AS AMENDED BY P.L.115-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) An application for license or renewal of a license must contain:

- (1) consent to service of process under subsection (e);
- (2) evidence of the bond required in subsection (b);
- (3) an application fee of two hundred dollars (\$200);
- (4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection (f);
- (5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;
- (6) a registration form setting forth the name, home address, home telephone number, and Social Security number of each employee or prospective employee of the applicant who is or who will be engaged in origination activities; and
- (7) evidence that the license applicant's proposed registrants have completed the education requirements of section 21 of this chapter.

(b) A licensee must maintain a bond satisfactory to the commissioner in the amount of ~~fifty~~ **seventy-five** thousand dollars (~~\$50,000~~), (**\$75,000**), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(c) The commissioner shall issue a license to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration authorizing the registrant to engage in origination activities.

(d) Licenses issued by the commissioner before January 1, 2001, shall be valid, and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses and certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. The education requirements of section 21 of this chapter shall first apply to applicants for issuance or renewal of

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licenses or registrations effective as of January 1, 2001.

(e) Every applicant for licensure or for renewal of a license shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(f) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(g) Whenever an initial or renewal application for license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

SECTION 3. IC 23-2-5-10, AS AMENDED BY P.L.14-2000, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) **Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule adopted or an order issued under this chapter, the commissioner may investigate and may issue:**

- (1) with a prior hearing if there exists no substantial threat of immediate irreparable harm; or**
- (2) without a prior hearing if there exists a substantial threat of immediate irreparable harm;**

**orders and notices the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.**

**(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a)(2), the commissioner shall promptly notify the respondent:**

- (1) that the order or notice has been issued;**
- (2) of the reasons the order or notice has been issued; and**
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.**

**If a hearing is not requested and not ordered by the commissioner,**



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an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny, suspend, or revoke the license of a licensee or the registration of a registrant if the licensee or the registrant:

(1) fails to maintain the bond required under section 5 of this chapter;

(2) is insolvent;

(3) has violated any provision of this chapter;

(4) has knowingly filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact or if a representation becomes false after the filing but during the term of a license or certificate of registration as provided in subsection ~~(e)~~; (g); or

(5) has been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit.

~~(b)~~ (d) The commissioner may not enter a final order denying, suspending, or revoking the license of a licensee or the registration of a registrant without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence within fifteen (15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

~~(e)~~ (e) IC 4-21.5 does not apply to a proceeding under this section.

~~(d)~~ (f) If:

(1) a licensee desires to have a previously unregistered employee begin engaging in origination activities; or

(2) an individual who was previously registered under this chapter

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is employed by another licensee who desires to have the registrant engage in origination activities; the employer licensee shall, within fifteen (15) days after the employee first conducts origination activities, submit to the commissioner, on a form prescribed by the commissioner, notice of the registrant's employment. If the employee has not previously been registered, the licensee shall submit evidence that the employee has completed the education requirements of section 21 of this chapter.

(e) (g) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

- (1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or
- (2) would not qualify for licensure or registration under this chapter as a result of a change in material fact or statement.

SECTION 4. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 10, 17, and 18 of this chapter:

- (1) Any attorney while engaging in the practice of law.
- (2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).
- (3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.
- (4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.
- (5) Any person that:
  - (A) procures;
  - (B) promises to procure; or
  - (C) assists in procuring;
 a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).
- (6) Any community development corporation (as defined in IC 4-4-28-2).



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**(7) The Indiana housing finance authority.**

**(8)** Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

SECTION 5. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**ARTICLE 4.8. INDIANA FAIR LENDING ACT**

**Chapter 1. Consumer Protections**

**Sec. 1. (a)** Except as provided in subsection (c), this article does not apply to a bank, trust company, savings and loan, savings bank, or credit union that is chartered under the laws of Indiana to the extent federal law precludes, preempts, or has been determined to preclude or preempt this article to a federally chartered bank, trust company, savings and loan, savings bank, or credit union.

**(b)** Any federal preclusion or preemption under subsection (a) applies to a state chartered entity only as it applies to the same type of federally chartered entity.

**(c)** The requirements of this article apply to a mortgage broker who originates or brokers a loan that is initially funded by any state or federally chartered bank, trust company, savings and loan, savings bank, or credit union.

**Sec. 2. (a)** The definitions in this section apply throughout this article.

**(b)** "Affiliate" means any entity that controls, is controlled by, or is under common control with another entity, as determined under the Federal Bank Holding Company Act (12 U.S.C. 1841 et.

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seq.), as amended. The term does not include an entity whose predominant business is providing tax deferred defined contribution pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code.

(c) "Bona fide discount points" means loan discount points that:

- (1) are knowingly paid by the borrower or on behalf of the borrower;
- (2) are paid for the express purpose of lowering the interest rate; and
- (3) in fact result in a bona fide reduction of the interest rate or time-price differential applicable to the loan.

The amount of interest rate reduction purchased by the discount points must be reasonably consistent with established norms and practices for mortgage market transactions.

(d) "Bridge loan" means temporary or short term financing with a maturity of less than eighteen (18) months that requires payments of interest only until the entire unpaid balance is due and payable.

(e) "Covered loan" means a consumer credit mortgage loan transaction other than an open end credit plan or a reverse mortgage in which:

- (1) the borrower is a natural person;
- (2) the debt is incurred by the obligor primarily for personal, family, or household purposes;
- (3) the loan is secured by a mortgage on residential real property or by collateral that has a mortgage lien interest in residential real property, and the residential real property is or will be occupied by the obligor as the obligor's principal dwelling; and
- (4) the terms of the loan provide:
  - (A) that the loan transaction, including a residential mortgage transaction (as defined in 12 CFR 226.2(a)(24)) at the time the loan is consummated is considered a mortgage under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. 1602(aa) and regulations adopted by the Federal Reserve Board, including 12 CFR 226.32; or
  - (B) for total points and fees payable by the borrower at or before the loan closing, exceed six percent (6%) of the total loan amount.

(f) "Lender" means any individual or entity that in any twelve (12) month period originates one (1) or more covered loans. The

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individual or entity to which the covered loan is initially payable, either on the face of the note or contract or by agreement when there is no note or contract, is considered to be the lender.

(g) "Mortgage broker" means a person, except for an employee or exclusive agent of a lender, who, for compensation, brings an obligor and a lender together to obtain a covered loan.

(h) "Municipality" means a county, city, town, or township.

(i) "Ninety (90) day period" means the period beginning on the day notice is provided under section 3 of this chapter and ending ninety (90) days later.

(j) "Obligor" means each obligor, co-obligor, cosigner, or guarantor obligated to repay a covered loan.

(k) "Political subdivision" means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity.

(l) "Servicer" has the same meaning provided in Section 2605(i)(2) of the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et. seq., as amended.

(m) "Total points and fees payable by the borrower at or before the loan closing" means points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004). However, total points and fees payable by the borrower at or before closing excludes not more than two (2) bona fide discount points.

**Sec. 3. A covered loan is subject to the following limitations:**

(1) A covered loan may not require a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments unless the a payment becomes due and payable at least one hundred twenty (120) months after the date of the loan. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(2) A covered loan may not contain a call provision that permits the lender, in the lender's sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated:

(A) by default;



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(B) under a due on sale provision;

(C) where there is fraud or material misrepresentation by an obligor in connection with the loan; or

(D) where there is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in the security for the loan.

(3) A covered loan may not require a payment schedule with regular periodic payments that cause the principal balance to increase. This does not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(4) A covered loan may not require any increase in the interest rate as a result of a default. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the loan agreement, provided the change in the interest rate is not occasioned by the default or a permissible acceleration of the indebtedness.

(5) A covered loan may not include terms under which more than two (2) periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(6) Prepayment fees are subject to the following limitations:

(A) A prepayment fee or penalty is permitted only during the first twenty-four (24) months after the date of execution of a covered loan.

(B) A lender may not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment fee. The terms of the offer must be in writing and initialed by the borrower. The offer must be clearly labeled in large bold type and must include the following disclosure:

**"LOAN PRODUCT CHOICE**

**I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."**

(C) A prepayment fee or penalty may not be charged on a refinancing of a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of the refinancing.

(D) A prepayment fee or penalty may not exceed two percent (2%) of the net unpaid balance as of the date of the

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prepayment.

(7) A lender shall not make a covered loan subject to a mandatory arbitration clause if the clause is oppressive, unfair, unconscionable, or substantially in derogation of the rights of the obligor. It is presumed that an arbitration clause that complies with the standards of the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on July 1, 2003 does not violate this subdivision.

Sec. 4. (a) A lender may not make a covered loan unless the lender or a mortgage broker has given the following notice (or a substantially similar notice) in writing to the obligor within a reasonable time of determining that the loan would result in a covered loan but not later than the time the notice is required under the notice provision contained in 12 CFR 226.31(c), as amended.

**"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE**

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit history and financial circumstances, your earnings history, the amount of your home's value that you wish to borrow, and the type of property that will secure your loan. The loan rate and fees could also vary based on which lender or mortgage broker you select.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender for information on contacting the Indiana housing finance authority established under IC 5-20-1-3 or call the United States Department of Housing and Urban Development's counseling hotline at \_\_\_\_\_ (insert telephone number) or go to \_\_\_\_\_ (insert web address) for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you also should remember that you may face serious financial

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1 risks if you use this loan to pay off credit card debts and other  
2 debts in connection with this transaction and then  
3 subsequently incur significant new credit card charges or  
4 other debts. If you continue to accumulate debt after this loan  
5 is closed and then experience financial difficulties, you could  
6 lose your home and any equity you have in it if you do not  
7 meet your mortgage loan obligations.

8 Property taxes and homeowner's insurance are your  
9 responsibility. Not all lenders provide escrow services for  
10 these payments. You should ask your lender about these  
11 services.

12 Your payments on existing debts contribute to your credit  
13 ratings. You should not accept any advice to ignore your  
14 regular payments to your existing creditors."

15 (b) A lender or mortgage broker has met its obligation to  
16 provide the disclosure described in subsection (a) if the consumer  
17 provides the lender or mortgage broker with a signed  
18 acknowledgment of receipt of a copy of the notice set forth in  
19 subsection (a).

20 (c) A lender who originates a covered loan may not extend  
21 credit to an obligor based on the obligor's collateral without regard  
22 to the obligor's ability to repay, including the obligor's current or  
23 expected income, current obligations, and employment.

24 (d) A lender will be presumed to have violated subsection (c) if  
25 the lender makes a covered loan without verifying or documenting  
26 the obligor's repayment ability.

27 (e) Any expected income from any source other than the  
28 obligor's equity in the property securing the covered loan,  
29 including regular salary or wages, gifts, expected retirement  
30 payments, or income from self employment may be considered  
31 when evaluating the obligor's ability to repay. A lender may verify  
32 and document an obligor's income and current obligations through  
33 any reliable source that provides the lender with a reasonable basis  
34 for believing there are sufficient funds to support the covered loan.  
35 Reliable sources include, but are not limited to, credit reports, tax  
36 returns, pension statements, and payment records for employment  
37 income.

38 (f) In the case of a loan based on the borrower's statement of the  
39 borrower's income, the reasonable basis for believing there are  
40 sufficient funds to support the covered loan may be the income  
41 stated by the consumer, as well as other information in the  
42 possession of the person originating the loan after the solicitation



1 of all information that the person customarily solicits in connection  
 2 with loans of that type. A lender may not knowingly or willfully  
 3 originate a covered loan as a loan based on the borrower's  
 4 statement of the borrower's income with the intent to evade this  
 5 subsection.

6 (g) A lender may not, within two (2) years after having made a  
 7 covered loan, charge an obligor points or fees in connection with  
 8 the covered loan if the proceeds of the covered loan are used to  
 9 refinance an existing covered loan for which points and fees were  
 10 charged. However, points and fees may be charged on any  
 11 proceeds of a covered loan that are in excess of the amount  
 12 refinanced on the existing covered loan.

13 (h) A lender may not finance, directly or indirectly, into a  
 14 covered loan or finance to the same obligor within thirty (30) days  
 15 of making a covered loan, any individual or group credit life, credit  
 16 accident and health, credit disability, or credit unemployment  
 17 insurance product on a prepaid single premium basis sold in  
 18 conjunction with a covered loan. Any individual or group credit  
 19 life, credit accident and health, credit disability, or credit  
 20 unemployment insurance premium calculated and paid on a  
 21 monthly or other periodic basis may not be considered financed by  
 22 the lender. This prohibition does not include contracts issued by a  
 23 government agency or private mortgage insurance company to  
 24 insure the lender against loss caused by an obligor's default.

25 (i) A lender may not replace or consolidate a zero (0) interest  
 26 rate or other subsidized low rate loan made by a governmental or  
 27 nonprofit lender with a covered loan within the first ten (10) years  
 28 of the subsidized low rate loan unless the current holder of the loan  
 29 consents in writing to the refinancing. For purposes of this  
 30 subsection, a "subsidized low rate loan" is a loan that carries a  
 31 current interest rate at least two (2) percentage points below the  
 32 current yield on treasury securities with a comparable maturity.  
 33 If the loan's current interest rate is either a discounted  
 34 introductory rate or a rate that automatically steps up over time,  
 35 the fully indexed rate or the fully stepped up rate, as appropriate,  
 36 should be used instead of the current rate to determine whether a  
 37 loan is a subsidized low rate loan.

38 (j) A lender may not pay a contractor under a home  
 39 improvement contract from the proceeds of a covered loan other  
 40 than by an instrument payable to the obligor or jointly to the  
 41 obligor and the contractor or, at the election of the obligor,  
 42 through a third party escrow agent in accordance with terms



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1 established in a written agreement signed by the obligor, the  
2 lender, and the contractor before the disbursement of funds to the  
3 contractor.

4 (k) A lender may not recommend or encourage default on an  
5 existing loan or other debt before or in connection with the closing  
6 or planned closing of a covered loan that refinances all or any part  
7 of the existing loan or debt.

8 (l) A lender may not charge a fee for informing or transmitting  
9 to a person the balance due to pay off a covered loan or to provide  
10 release upon prepayment. A lender must provide a payoff balance  
11 not later than seven (7) business days after the request is received  
12 by the lender.

13 (m) A lender may not charge an obligor fees or other charges to  
14 modify, renew, extend, or amend a covered loan or to defer any  
15 payment due under the terms of a covered loan.

16 (n) A person may not knowingly and intentionally make,  
17 propose, or solicit fraudulent, false, or misleading statements on  
18 any mortgage document or any document related to a mortgage,  
19 including a mortgage application, real estate appraisal, or real  
20 estate settlement or closing document. For purposes of this  
21 subsection, "fraudulent, false, or misleading statements" does not  
22 include mathematical errors, inadvertent transposition of  
23 numbers, typographical errors, or any other bona fide error.

24 (o) Except as provided in IC 24-4.5-3-203.5, a lender may not  
25 charge a late payment fee on a covered loan.

26 (p) A lender may not knowingly or intentionally structure or  
27 restructure a closed-end covered loan as an open-end credit  
28 transaction for the purpose of evading the requirements of this  
29 article.

30 (q) A lender may not knowingly or intentionally divide a  
31 covered loan into separate parts for the purpose of evading the  
32 requirements of this article.

33 Sec. 5. A servicer of a covered loan shall report at least  
34 quarterly both the favorable and unfavorable payment history  
35 information of the obligor on payments due to the lender on a  
36 covered loan to a nationally recognized consumer credit reporting  
37 agency. This subsection does not prevent a servicer from agreeing  
38 with the obligor not to report specified payment history  
39 information in the event of a resolved or unresolved dispute with  
40 an obligor and does not apply to covered loans held or serviced by  
41 a lender for less than ninety (90) days.

42 Sec. 6. A lender making a covered loan that has the right to

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1 foreclose must use the judicial foreclosure procedures of the state  
 2 in which the property securing the loan is located. The obligor has  
 3 the right to assert in the proceeding the nonexistence of a default  
 4 and any other claim or defense to acceleration and foreclosure,  
 5 including a claim or defense based on a violation of this article.  
 6 Nothing in this section is intended or shall be construed to allow  
 7 any claim or defense otherwise barred by any statute of limitation  
 8 or repose.

9 Sec. 7. A lender may not discriminate against an applicant with  
 10 respect to any aspect of a credit transaction on the basis of race,  
 11 color, religion, national origin, sex or marital status, or age,  
 12 provided that the applicant has the ability to contract.

### 13 Chapter 2. Enforcement and Mortgage Fraud Unit

14 Sec. 1. (a) The attorney general may enforce this article for any  
 15 violation occurring within five (5) years after the making of the  
 16 covered loan.

17 (b) As used in this chapter, "appropriate restitution" means the  
 18 reimbursement by the lender of any points, fees, interest, or other  
 19 payments that were made to the lender from the obligor and which  
 20 are necessary to restore the obligor to the same position as the  
 21 obligor would have been in had the loan originally been made  
 22 according to the adjusted terms of section 7 of this chapter.

23 (c) As used in this chapter, "fraud" means an act or practice as  
 24 part of a consumer credit mortgage transaction involving real  
 25 property located in Indiana in which a lender:

- 26 (1) knowingly or intentionally makes a material
- 27 misrepresentation to a borrower;
- 28 (2) knowingly or intentionally conceals or obscures material
- 29 information from the borrower regarding the terms or
- 30 conditions of the transaction;
- 31 (3) knowingly or intentionally consummates the credit
- 32 mortgage transaction with the knowledge that the borrower
- 33 will be unable to successfully fulfill the terms or conditions of
- 34 the mortgage loan based upon the borrower's finances at the
- 35 time of the consummation;
- 36 (4) knowingly or intentionally includes terms or conditions in
- 37 the mortgage loan that substantially increase the likelihood of
- 38 default; or
- 39 (5) violates this article.

40 The applicable provisions of this section also apply to a mortgage  
 41 broker or real estate appraiser who assists in or is a part of the  
 42 consumer credit mortgage transaction.



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1 (d) As used in this chapter, "unit" refers to the mortgage fraud  
2 unit established by this section.

3 (e) The mortgage fraud unit is established in the office of the  
4 attorney general.

5 (f) The attorney general shall hire qualified individuals to  
6 implement the responsibilities of the unit, subject to the budget  
7 agency's approval.

8 (g) The unit shall do the following:

9 (1) Investigate allegations of fraud in connection with  
10 mortgage loans.

11 (2) Institute appropriate administrative and civil actions to  
12 redress fraud in connection with mortgage loans.

13 (3) Cooperate with federal, state, and local law enforcement  
14 agencies in the investigation of fraud in connection with  
15 mortgage loans.

16 (4) Cooperate with appropriate federal and state agencies in  
17 the prosecution of criminal violations involving fraud in  
18 connection with mortgage loans.

19 (h) The unit shall cooperate with the following to implement this  
20 chapter:

21 (1) The Indiana professional licensing agency and the  
22 appropriate licensing boards with respect to persons licensed  
23 under IC 25.

24 (2) The department of financial institutions.

25 (3) The department of insurance with respect to the sale of  
26 insurance in connection with mortgage lending.

27 (4) The securities division of the office of the secretary of  
28 state.

29 (5) The supreme court disciplinary commission with respect  
30 to attorney misconduct.

31 Sec. 2. The attorney general may file complaints with any of the  
32 agencies listed in section 1(f) of this chapter to implement this  
33 chapter.

34 Sec. 3. The establishment of the unit and its powers does not  
35 limit the jurisdiction of any agency described in section 1(f) of this  
36 chapter.

37 Sec. 4. (a) The attorney general and an investigator of the unit  
38 may do any of the following when investigating alleged fraud in  
39 connection with mortgage lending:

40 (1) Issue and serve a subpoena for the production of records,  
41 including records stored in electronic data processing systems,  
42 for inspection by the attorney general or the investigator.



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(2) Issue and serve a subpoena for the appearance of any person before the attorney general to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

(b) The attorney general may make recommendations to the general assembly for appropriate legislation to address fraud in connection with mortgage lending.

(c) The unit shall maintain an education program to inform consumers of mortgage loans about fraud in connection with mortgage lending. The unit shall cooperate with the agencies listed in section 1(f) of this chapter to develop and implement the education program required by this subsection.

**Sec. 5.** The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

(1) issue an injunction;

(2) order a person to make restitution;

(3) void or limit the application of obligations that violate this article;

(4) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and

(5) impose a civil penalty of not more than two thousand dollars (\$2,000) per violation.

**Sec. 6. (a)** A person who violates an injunction issued under section 5 of this chapter must pay a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation.

(b) The court that issues an injunction under section 5 of this chapter retains jurisdiction over a proceeding seeking imposition of a civil penalty under this section.

(c) The attorney general, acting in the name of the state, has the exclusive right to petition for imposition of a civil penalty under this section.

(d) If a court determines that a person:

(1) has violated an injunction issued under section 5 of this chapter; and

(2) must pay a civil penalty;

the court shall also require the person to reimburse the state for reasonable costs related to bringing an action under this section.

**Sec. 7.** A lender of a covered loan who in good faith fails to comply with the requirements of IC 24-4.8-1 does not violate this article if:



(1) not later than sixty (60) days after the loan closing the obligor is notified of the lender's failure to comply with the requirements of IC 24-4.8-1. The lender must make appropriate restitution to the obligor, and the terms of the loan must be adjusted, at the choice of the obligor, so that the loan:

(A) complies with the requirements of IC 24-4.8-1; or

(B) is no longer considered a covered loan under this article and the adjusted terms of the loan are beneficial to the obligor; or

(2) the failure to comply was unintentional and resulted from an error notwithstanding the maintenance of procedures reasonably adopted to avoid noncompliance. The lender shall, not later than sixty (60) days after the discovery of noncompliance, notify the obligor of the noncompliance, make appropriate restitution to the obligor, and adjust the terms of the loan, at the choice of the obligor, so that the loan:

(A) complies with the requirements of IC 24-4.8-1; or

(B) is no longer considered a covered loan under this article and the adjusted terms of the loan are beneficial to the obligor.

**Sec. 8. (a)** If a person suffers a pecuniary loss as a result of a violation of this article, the person may bring a civil action for the following:

(1) Actual damages.

(2) The costs of the action.

(3) A reasonable attorney's fee.

(b) An action under this section may not be brought, commenced, or maintained unless the action is filed within five (5) years after the date the person knew or by the exercise of reasonable diligence should have known of the violation of this article.

(c) An award of actual damages under subsection (a)(1) has priority over a civil penalty imposed under this chapter.

### **Chapter 3. State Power to Regulate Lending**

**Sec. 1. (a)** The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

(b) Political subdivisions may not enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals,



or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices, including interest rates and fees, or from imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

(1) are subject to the jurisdiction of the department of financial institutions;

(2) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(3) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivision (1), (2), (4), or (5);

(4) are chartered by the United States Congress to engage in secondary market mortgage transactions; or

(5) are created by the Indiana housing finance authority.

#### **Chapter 4. Revenue and Appropriations**

**Sec. 1.** The fees assessed by the county recorder to record a mortgage are increased by three dollars (\$3) per mortgage filing. The county recorder shall retain fifty cents (\$0.50) of the fee increase for the county recorder's records perpetuation fund established under IC 36-2-7-10. The remaining revenue from this fee increase shall be distributed to the state auditor's office. The state auditor shall distribute the revenue from this increase as follows:

(1) Fifty percent (50%) to the attorney general for use in mortgage fraud enforcement under section 3 of this chapter.

(2) Fifty percent (50%) to the Indiana housing finance authority under IC 5-20-1-3 for mortgage literacy training and programs under section 2 of this chapter.

**Sec. 2.** The fee allocation under section 1(2) of this chapter shall be distributed on a quarterly basis to the Indiana housing finance authority for the purpose of identifying, promoting, and funding mortgage literacy training and programs throughout the state. Such training and programs shall cover topics that include home



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1 buying and mortgage lending.

2 Sec. 3. The fee allocation under section 1(1) of this chapter shall  
3 be distributed on a quarterly basis to the mortgage fraud unit  
4 created within the office of the attorney general by  
5 IC 24-4.8-2-1(c).

6 Sec. 4. (a) An allocation of seventy-five thousand dollars  
7 (\$75,000) consisting of the increased fees under this chapter shall  
8 be made to the legislative services agency before any fee revenue  
9 may be allocated to the mortgage fraud unit of the attorney  
10 general's office or the department of education. The seventy-five  
11 thousand dollar (\$75,000) allocation shall be used to contract with  
12 the Kelly School of Business at Indiana University to conduct a  
13 study of the causes of the high rate of foreclosure in Indiana during  
14 2001 and 2002.

15 (b) The results of the study shall be reported in writing to the  
16 legislative services agency not later than December 31, 2004. The  
17 legislative services agency shall distribute the report to the  
18 legislative council, the department of financial institutions, and the  
19 attorney general.

#### 20 Chapter 5. Assignee Liability

21 Sec. 1. (a) Except as provided in subsection (b), a person who  
22 purchases or who is assigned a covered loan from a lender is  
23 subject to the same claims and entitled to the same defenses as the  
24 lender.

25 (b) If an action is commenced:

26 (1) by the mortgage fraud unit; or

27 (2) by an individual under IC 24-4.8-2-8;

28 alleging the covered loan does not meet the requirements of  
29 IC 24-4.8-1, the person may not be held liable for violations of this  
30 article if the person establishes by a preponderance of the evidence  
31 that a reasonable person exercising ordinary due diligence could  
32 not have determined at the time the covered loan was purchased or  
33 assigned that the covered loan violated this article.

34 Sec. 2. If it is determined that a person who purchases or who  
35 is assigned a covered loan is liable for civil penalties or amounts  
36 under IC 24-4.8-2-8, the total amount of liability may not exceed  
37 the:

38 (1) remaining amount of obligor indebtedness; and

39 (2) total amount paid by the obligor in connection with the  
40 covered loan.

41 SECTION 6. [EFFECTIVE JULY 1, 2003] The provisions of  
42 IC 24-4.8, as added by this act, are severable in the manner



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1     **provided by IC 1-1-1-8(b).**  
2         SECTION 7. [EFFECTIVE JULY 1, 2003] IC 24-4.8, as added by  
3     **this act, applies only to loans originated after December 31, 2003.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1655, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 23-2-5-3, AS AMENDED BY P.L.115-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to engage in origination activities on behalf of a licensee.

(b) As used in this chapter, "creditor" means a person:

- (1) that loans funds of the person in connection with a loan; and
- (2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.

(c) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

(d) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(e) As used in this chapter, "loan broker" means any person who, in return for any consideration from any person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for **the Indiana housing finance authority**, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, act as a supervised lender or non-supervised automatic lender of the

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United States Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development;

(3) any insurance company; ~~or~~

(4) any person arranging financing for the sale of the person's product; ~~or~~

**(5) any community development corporation (as defined in IC 4-4-28-2).**

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means establishing the terms or conditions of a loan with a borrower or prospective borrower.

(h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(i) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

SECTION 2. IC 23-2-5-5, AS AMENDED BY P.L.115-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) An application for license or renewal of a license must contain:

(1) consent to service of process under subsection (e);

(2) evidence of the bond required in subsection (b);

(3) an application fee of ~~two~~ **three** hundred dollars (~~\$200~~); **(\$300);**

(4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection (f);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;

(6) a registration form setting forth the name, home address, home

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telephone number, and Social Security number of each employee or prospective employee of the applicant who is or who will be engaged in origination activities; and

(7) evidence that the license applicant's proposed registrants have completed the education requirements of section 21 of this chapter.

(b) A licensee must maintain a bond satisfactory to the commissioner in the amount of ~~forty~~ **one hundred** thousand dollars (~~\$50,000~~), (**\$100,000**), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(c) The commissioner shall issue a license to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration authorizing the registrant to engage in origination activities.

(d) Licenses issued by the commissioner before January 1, 2001, shall be valid, and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses and certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. The education requirements of section 21 of this chapter shall first apply to applicants for issuance or renewal of licenses or registrations effective as of January 1, 2001.

(e) Every applicant for licensure or for renewal of a license shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(f) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(g) Whenever an initial or renewal application for license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

SECTION 3. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. (a) The following persons are exempt from the

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requirements of sections 4, 5, 6, 9, 10, 17, and 18 of this chapter:

- (1) Any attorney while engaging in the practice of law.
- (2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).
- (3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.
- (4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.
- (5) Any person that:
  - (A) procures;
  - (B) promises to procure; or
  - (C) assists in procuring;
 a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).
- (6) **Any community development corporation (as defined in IC 4-4-28-2).**
- (7) **The Indiana housing finance authority.**
- (8) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

- (1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.
- (2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.
- (3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

SECTION 4. IC 24-4.6-5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**EH 1655—LS 7174/DI 108+**



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**Chapter 5. Indiana Fair Lending and Home Loan Protection Act**

**Sec. 1.** As used in this chapter, "benchmark rate" means the interest rate established under Section 152 of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations adopted under that act by the Federal Reserve Board, including 12 CFR 226.32, and the Official Staff Commentary to the regulations as each is amended.

**Sec. 2.** As used in this chapter, "bona fide discount points" means loan discount points that are:

- (1) knowingly paid by the borrower;
- (2) paid for the express purpose of lowering the benchmark rate;
- (3) in fact reducing the interest rate or time-price differential applicable to the loan from an interest rate that does not exceed the benchmark rate; and
- (4) recouped within the first four (4) years of the scheduled loan payments, if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments so that the borrower's dollar amount of savings in interest over the first four (4) years is equal to or greater than the dollar amount of loan discount points paid by the borrower.

**Sec. 3.** As used in this chapter, "borrower" means a person obligated to repay a home loan, including a coborrower, cosigner, or guarantor.

**Sec. 4. (a)** As used in this chapter, "creditor" means a person who:

- (1) regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four (4) installments; and
- (2) is a person to whom the debt arising from the home loan transaction is initially payable.

**(b)** The term also means:

- (1) any person brokering a home loan, including any person who:
  - (A) directly or indirectly solicits, processes, places, or negotiates home loans for others;
  - (B) offers to solicit, process, place, or negotiate home loans for others; or
  - (C) closes home loans that may be in the person's own name with funds provided by others and that are



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thereafter assigned to the person providing funding for such loans.

(c) The term does not include:

- (1) a servicer;
- (2) any state or local housing finance authority;
- (3) any other state or local governmental or quasi governmental entity; or
- (4) an attorney providing legal services in association with the closing of a home loan.

Sec. 5. As used in this chapter, "high cost home loan" means a home loan whose interest rate or points and fees exceed the benchmark rate.

Sec. 6. As used in this chapter, "home loan" means a loan, other than a reverse mortgage transaction, where the loan is secured by a:

- (1) mortgage or deed of trust on real estate in Indiana upon which there is located or there is to be located a structure or structures designed primarily for occupancy of one (1) to four (4) families and that is or will be occupied by a borrower as the borrower's principal dwelling; or
- (2) security interest on a manufactured home that is or will be occupied by a borrower as the borrower's principal dwelling.

Sec. 7. (a) As used in this chapter, "manufactured home" means a structure transportable in one (1) or more sections:

- (1) that:
  - (A) is greater than or equal to eight (8) body feet in width; or
  - (B) is greater than or equal to forty (40) body feet in length;
- (2) built on a permanent chassis; and
- (3) designed to be used as a dwelling:
  - (A) with a permanent foundation when erected on land secured in conjunction with the real property where the manufactured home is located;
  - (B) connected to the required utilities; and
  - (C) containing the required plumbing, heating, air conditioning, and electrical systems.

(b) The term includes any structure:

- (1) that meets all requirements of subsection (a) except subsection (a)(1)(A) or (a)(1)(B); and
- (2) with respect to which the manufacturer:
  - (A) voluntarily files a certification required by the United

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States Department of Housing and Urban Development;  
and

(B) complies with the standards established under the  
National Manufactured Housing Construction and Safety  
Standards Act (42 U.S.C. 5401 et seq.).

(c) The term does not include:

- (1) rental property;
- (2) second homes; or
- (3) manufactured homes when not secured in conjunction  
with the real property on which the manufactured home is  
located.

Sec. 8. As used in this chapter, "points and fees" means any of  
the following:

- (1) An amount payable under a point, discount, or other  
system or additional charges.
- (2) A service or carrying charge.
- (3) A loan fee, finder's fee, or similar charge.
- (4) A fee for an investigation report.
- (5) Items exempted from computation of points and fees in  
extensions of credit secured by an interest in real property.  
However, the following items, when charged in connection  
with any extension of credit secured by an interest in real  
property, may not be included in the computation of the  
finance charge with respect to that transaction, provided that  
the creditor does not receive direct or indirect compensation  
in connection with the charge and the charge is not paid to an  
affiliate of the creditor:
  - (A) Fees or premiums for title examination, title insurance,  
or similar purposes.
  - (B) Fees for preparation of loan related documents.
  - (C) Escrows for future payments of taxes and insurance.
  - (D) Fees for notarizing deeds and other documents.
  - (E) Appraisal fees, including fees related to any pest  
infestation or flood hazard inspections conducted before  
closing.
  - (F) Credit reports.
- (6) All compensation paid directly or indirectly to a mortgage  
broker, including a broker that originates a loan in its own  
name in a table funded transaction.
- (7) The cost of all premiums financed by the creditor, directly  
or indirectly, for:
  - (A) credit life;



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- (B) credit disability;
- (C) credit unemployment;
- (D) credit property insurance;
- (E) other life or health insurance; or
- (F) any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract. However, insurance premiums calculated and paid on a monthly basis are not considered financed by the creditor.

**Sec. 9.** As used in this chapter, "rate" means the interest rate charged on the home loan, based on an annual simple interest yield.

**Sec. 10.** As used in this chapter, "total loan amount" means:

- (1) the principal of the loan minus the points and fees that are included in the principal amount of the loan; or
- (2) the total line of credit allowed under the home loan for an open end loan.

**Sec. 11.** As used in this chapter, "trigger rate" means:

- (1) for fixed rate loans in which the interest rate will not vary during the term of the loan, the rate as of the date of closing;
- (2) for loans in which the interest varies according to an index, the sum of the index rate as of the date of loan closing plus the maximum margin permitted at any time under the loan agreement; or
- (3) for all other loans in which the rate may vary at any time during the term of the loan, the maximum rate that may be charged during the term of the loan.

**Sec. 12.** A creditor making a home loan may not finance, directly or indirectly, any:

- (1) credit life insurance;
- (2) credit disability insurance;
- (3) credit unemployment insurance;
- (4) credit property insurance;
- (5) other life or health insurance; or
- (6) payments directly or indirectly for any cancellation suspension agreement or contract.

However, insurance premiums, debt cancellation fees, or suspension fees calculated and paid on a monthly basis may not be considered financed by the creditor for purposes of this chapter.

**Sec. 13.** When within the first three (3) years of a high cost home loan a refinancing occurs, a current creditor of that high cost home loan may only charge points and fees on the amount that exceeds the principal and interest paid to close the original loan.



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**Sec. 14.** A creditor may not recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or any part of the existing loan or debt.

**Sec. 15.** A creditor may not charge a late payment fee except according to the following rules:

- (1) The late payment fee may not exceed four percent (4%) of the amount of the payment past due.
- (2) The late payment fee may be assessed only for a payment past due for at least fifteen (15) days.
- (3) The late payment fee may not be charged more than one (1) time with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan and the deduction causes a subsequent default on a subsequent payment, a late payment charge may not be imposed for the default. If a late payment charge has been imposed one (1) time with respect to a particular late payment, a late payment fee may not be imposed with respect to any future payment that would have been timely and sufficient, but for the previous default.
- (4) A late payment fee may not be charged unless the creditor notifies the borrower within forty-five (45) days following the date the payment was due that a late payment charge has been imposed for a particular late payment. A late payment charge may not be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment within forty-five (45) days after receipt of the creditor's notice of the late charge.
- (5) A creditor shall treat each payment as posted on the same date as it was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or the creditor's agent for making payments.

**Sec. 16.** A home loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This section does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

**Sec. 17.** A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a release upon prepayment. A creditor must provide a

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payoff balance not later than seven (7) business days after the request is received by the creditor.

**Sec. 18. (a) The following additional limitations and prohibited practices apply to a high cost home loan:**

**(1) Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the loan amount prepaid during the first twenty-four (24) months after the loan closing.**

**(2) A prepayment penalty may not be contracted for after the second year following the loan closing.**

**(3) A creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of this offer shall be made in writing and shall be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:**

**"LOAN PRODUCT CHOICE**

**I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."**

**(b) A high cost home loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments, unless the payment schedule is adjusted to the seasonal or irregular income of the borrower.**

**(c) A high cost home loan may not include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.**

**(d) A high cost home loan may not contain a provision that increases the interest rate after default. However, this subsection does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.**

**(e) A high cost home loan may not include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.**

**(f) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a home**

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loan agreement that:

(1) allows a party to require a borrower to assert any claim or defense in a forum that is:

- (A) less convenient;
- (B) more costly; or
- (C) more dilatory;

for the resolution of the dispute than a judicial forum established in this state where the borrower may otherwise bring a claim or defense; or

(2) limits in any way any claim or defense the borrower may have;

is unconscionable and void.

(g) A creditor may not make a high cost home loan without first providing the borrower information to facilitate contact with a nonprofit counselor approved by the United States Department of Housing and Urban Development or the Indiana housing finance authority established by IC 5-20-1-3 and copies of all documentation required from the creditor at the time of closing under the Federal Truth In Lending Act. This information must be delivered by certified mail at least seventy-two (72) hours before the closing.

(h) A creditor may not make a high cost home loan without regard to repayment ability. If a creditor presents evidence that the creditor followed commercially reasonable practices in determining the debt to income ratio, there is a rebuttable presumption that the creditor made the loan with due regard to repayment ability. The lender shall benefit from the rebuttable presumption that the borrower's statement of income is true and complete.

(i) A creditor may not pay a contractor under a home improvement contract from the proceeds of a high cost home loan unless:

- (1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and
- (2) the instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third party escrow agent under a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

(j) A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan



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or to defer any payment due under the terms of a high cost home loan.

(k) A creditor making a high cost home loan that has the right to foreclose must use the judicial foreclosure procedures of the state where the property securing the loan is located. The borrower has the right to assert in the proceeding the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any claim or defense based on any violations of this chapter, though no claim or defense is considered a compulsory counterclaim.

(l) A creditor may not engage in a practice or have a policy that encourages making a high cost home loan on the basis of race, ethnicity, gender, or age.

Sec. 19. If a creditor asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf at any time before the title is transferred by means of foreclosure, by judicial proceeding and sale, or otherwise, may cure the default and reinstate the home loan by tendering the amount or performance as specified in the security instrument. If the borrower cures the default, the borrower must be reinstated to the same position as if the default had not occurred, and any acceleration of any obligation under the security instrument or note arising from the default is nullified as of the date of the cure.

Sec. 20. (a) Before an action is filed to foreclose upon the home or before other action is taken to seize or transfer ownership of the home, a notice of the right to cure the default in a home loan must be delivered to the borrower, informing the borrower of the following:

- (1) The nature of default claimed on the home loan and the borrower's right to cure the default by paying the sum of money required to cure the default. However, a creditor or servicer may not refuse to accept any partial payment made or tendered in response to the notice. If the amount necessary to cure the default will change during the thirty (30) day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees as allowed by this chapter, the notice must give sufficient information to enable the borrower to calculate the amount at any point during the thirty (30) day period.
- (2) The date by which the borrower must cure the default to avoid acceleration and initiation of foreclosure or other action



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to seize the home. The date may not be less than thirty (30) days after the date the notice is effective. The name, address, and telephone number of a person to whom the payment or tender must be made must also be disclosed.

(3) That if the borrower does not cure the default by the date specified, the creditor may take steps to terminate the borrower's ownership in the property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the home.

(4) The name and address of the creditor and the telephone number of a representative of the creditor whom the borrower may contact if the borrower disagrees with:

- (A) the creditor's assertion that a default has occurred; or
- (B) the correctness of the creditor's calculation of the amount required to cure the default.

(b) To cure a default under this section, a borrower may not be required to pay a charge, fee, or penalty attributable to the exercise of the right to cure a default, as provided for in this section, other than the fees specifically allowed by this section. The borrower is not liable for:

- (1) attorney's fees relating to the borrower's default that are incurred by the lender before or during the thirty (30) day period described in subsection (a)(2); or
- (2) a fee exceeding one hundred dollars (\$100) that is incurred by the lender after the expiration of the thirty (30) day period but before the lender files a foreclosure action or takes other action to seize or transfer ownership of the home.

After the lender files a foreclosure action or takes other action to seize or transfer ownership of the home, the borrower is liable only for attorney's fees that are reasonable and actually incurred by the lender, based on a reasonable hourly rate and a reasonable number of hours.

(c) If a default is cured before the initiation of an action to foreclose or to seize the residence, the creditor may not institute the foreclosure proceeding or other action for that default. If a default is cured after the initiation of any action to foreclose, the creditor shall take the steps necessary to terminate the foreclosure proceeding or other action. A creditor making a home loan who has the legal right to foreclose must use the judicial foreclosure procedures of the state where the property securing the loan is located. The borrower may assert in a judicial foreclosure proceeding or other action the nonexistence of a default and any



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other claim or defense to acceleration and foreclosure, including a claim or defense based on violations of this chapter. However, a claim or defense may not be considered a compulsory counterclaim.

**Sec. 21.** If the creditor or an assignee establishes by a preponderance of evidence that a violation of this chapter is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, the validity of the transaction is not affected, and no liability is imposed under section 22 except for the refusal to make a refund.

**Sec. 22.** (a) A person who knowingly or intentionally violates this article commits:

- (1) a Class A misdemeanor; and
- (2) a deceptive act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

(b) A person who violates this chapter is liable to the borrower for the following:

- (1) Actual damages, including consequential and incidental damages. The borrower is not required to demonstrate reliance in order to receive actual damages.
- (2) Statutory damages equal to the finance charges agreed to in the home loan agreement, plus ten percent (10%) of the amount financed.
- (3) Punitive damages, if the violation was malicious or reckless.
- (4) Costs and reasonable attorney's fees.

(c) A borrower may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(d) The knowing or intentional violation of this chapter or a rule adopted under the authority of this chapter renders the home loan agreement void, and the creditor has no right to collect, receive, or retain any principal, interest, or other charges with respect to the loan. The borrower may recover any payments made under the agreement.

(e) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a consumer. A consumer is not required to exhaust any administrative remedies under this chapter or under any other applicable law.

(f) A creditor or assignee in a home loan who in good faith fails

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to comply with this chapter may not be considered to have violated this chapter if the creditor makes full restitution for the error within sixty (60) days from the discovery of the error.

(g) The brokering of a home loan:

(1) by a home loan broker as described in section 4(b) of this chapter; and

(2) that violates any provision of this chapter;

constitutes a violation of that provision and of this chapter.

Sec. 23. The rights conferred by this chapter are in addition to rights granted under any other law.

Sec. 24. (a) The attorney general shall enforce this chapter for any violation occurring within five (5) years after the occurrence of the violations.

(b) As used in this chapter, "unit" refers to the mortgage fraud unit established by this section.

(c) The mortgage fraud unit is established in the office of the attorney general.

(d) The attorney general shall hire qualified individuals to implement the responsibilities of the unit, subject to the budget agency's approval.

(e) The unit shall do the following:

(1) Investigate allegations of fraud in connection with mortgage lending.

(2) Institute appropriate administrative and civil actions to redress fraud in connection with mortgage lending.

(3) Cooperate with federal, state, and local law enforcement agencies in the investigation of fraud in connection with mortgage lending.

(4) Cooperate with appropriate federal and state agencies in the prosecution of criminal violations involving fraud in connection with mortgage lending.

(f) The unit shall cooperate with the following to implement this chapter:

(1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The supreme court disciplinary commission with respect

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to attorney misconduct.

**Sec. 25.** The attorney general may file complaints with any of the agencies listed in section 24(f) of this chapter to implement this chapter.

**Sec. 26.** The establishment of the unit and its powers do not limit the jurisdiction of any agency described in section 24(f) of this chapter.

**Sec. 27. (a)** The attorney general and an investigator of the unit may do any of the following when investigating alleged fraud in connection with mortgage lending:

- (1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.
- (2) Issue and serve a subpoena for the appearance of any person before the department to provide testimony under oath.
- (3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

**(b)** The attorney general shall make recommendations to the general assembly for appropriate legislation to address fraud in connection with mortgage lending.

**(c)** The unit shall maintain an education program to inform consumers of mortgage loans of fraud in connection with mortgage lending. The unit shall cooperate with the agencies listed in section 24(f) of this chapter to develop and implement the education program required by this subsection.

**Sec. 28. (a)** The fees assessed by the county recorder to record a mortgage is increased by three dollars (\$3) per mortgage filing. The county recorder shall retain fifty cents (\$0.50) of the fee increase. One dollar and fifty cents (\$1.50) shall be credited to the Indiana housing finance authority established under IC 5-20-1-3 to identify, promote, and fund mortgage literacy training and programs throughout the state. One dollar (\$1) from the fee increase is credited to the mortgage fraud unit.

**(b)** An allocation of seventy-five thousand dollars (\$75,000) consisting of the increased fees under this chapter shall be made to the legislative council before any fee revenue shall be allocated to the mortgage fraud unit of the attorney general's office or the Indiana housing finance authority. The seventy-five thousand dollar (\$75,000) allocation shall be used to contract an independent organization to conduct a study of predatory lending and the causes of the high rate of foreclosure in Indiana during 2001 and

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2002.

(c) The results of the study shall be reported in writing to the legislative council not later than December 31, 2004. The report is a public record. This subsection expires January 1, 2005.

(d) The legislative council may establish an interim study committee to investigate predatory lending and the high rate of foreclosure in Indiana.

Sec. 29. The fee assessed under IC 23-2-5 by the for the registration of loan brokers and originators is increased by one hundred dollars (\$100) for renewal of a registration and by one hundred dollars (\$100) for an initial registration and is credited to the loan broker regulation account established by IC 23-2-5-7.

Sec. 30. A servicer of a covered loan shall report at least monthly both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection does not prevent a servicer from agreeing with the borrower not to report specified payment history information in the event of a resolved or unresolved dispute with an borrower and does not apply to covered loans held or serviced by a lender for less than ninety (90) days."

Page 4, after line 16, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE UPON PASSAGE] This act does not affect:

- (1) rights or liabilities accrued;
- (2) penalties incurred;
- (3) crimes committed; or
- (4) proceedings begun;

before the effective date of this act. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if this act had not been enacted.

SECTION 6. [EFFECTIVE UPON PASSAGE] The provisions of this act are severable in the manner provided by IC 1-1-1-8(b).

SECTION 7. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1698 as introduced.)

BARDON, Chair

Committee Vote: yeas 10, nays 2.

EH 1655—LS 7174/DI 108+



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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1655 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions and to make an appropriation.

Page 3, line 26, delete "one hundred" and insert "**seventy-five**".

Page 3, line 27, delete "(\$100,000) and insert "**(\$75,000)**".

Page 5, line 30, delete "benchmark" and insert "**interest**".

Page 10, line 18, after "provide a" insert "**written**".

Page 10, line 19, delete "seven (7)" and insert "**ten (10)**".

Page 11, line 35, delete "and copies of all" and insert "**at the same time as the good faith estimates are provided to the borrower in accordance with the requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et. seq., as amended.**".

Page 11, delete lines 36 through 39.

Page 12, line 27, delete "chapter, though no claim or defense is considered a" and insert "**chapter. Nothing in this subsection is intended or shall be construed to allow any claim or defense otherwise barred by any statute of limitation or repose.**".

Page 12, delete line 28.

Page 12, line 29, delete "A creditor may not engage in a practice or have a policy that" and insert "**It shall be unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, or age, provided that the applicant has the ability to contract.**".

Page 12, delete lines 30 through 31.

Delete page 13.

Page 14, delete lines 1 through 22.

Page 14, line 23, delete "Sec. 21." and insert "**Sec. 20. (a)**".

Page 14, between lines 29 and 30 begin a new paragraph and insert:

**"(b) A creditor in a high cost home loan who in good faith fails to comply with this chapter shall not be considered to have violated this chapter if the creditor establishes that:**

**(1) not later than sixty (60) days after the date of the discovery of the error the creditor:**

**(A) notifies the borrower of the compliance error;**

**(B) makes appropriate restitution to the borrower of any amounts collected in error; and**

**(C) makes all appropriate adjustments to the loan to correct the error.**

EH 1655—LS 7174/DI 108+



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(c) Before subsection (b) applies, the creditor must establish that the compliance failure was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid the errors. For purposes of this subsection, bona fide errors include clerical errors, calculation errors, computer malfunction and programming errors, and printing errors. An error of legal judgment with respect to a person's obligations under this chapter is not a bona fide error for purposes of this subsection."

Page 14, line 30, delete "Sec. 22." and insert "Sec. 21."

Page 14, line 30, after "(a)" insert " The attorney general may bring an action to enjoin a violation. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) void or limit the application of obligations that violate this chapter;
- (4) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this chapter; or
- (5) impose a civil penalty of not more than two thousand dollars (\$2,000) per violation.

(b) A person who violates an injunction under this section must pay a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation.

(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section.

Sec. 22 (a)."

Page 14, between lines 35 and 36 begin anew paragraph and insert"

"(b) The attorney general may refer a matter under this section to a prosecuting attorney for enforcement."

Page 14, line 36, delete "(b)" and insert "Sec. 23. (a)".

Page 15, line 2, delete "malicious or" and insert "intentional or malicious."

Page 15, delete line 3.

Page 15, line 5, delete "(c)" and insert "(b)".

Page 15, line 8, delete "(d)" and insert "(c)".

Page 15, line 14, delete "(e)" and insert "(d)".

Page 15, line 18, delete "(f)" and insert "(e)".

Page 15, line 19, delete "may" and insert "shall".

Page 15, line 22, delete "(g)" and insert "(f)".



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Page 15, line 27, delete "Sec. 23." and insert "**Sec. 24.**".

Page 15, line 29, delete "Sec. 24." and insert "**Sec. 25.**".

Page 16, line 20, delete "Sec. 25." and insert "**Sec. 26.**".

Page 16, line 21, delete "24(f)" and insert "**25(f)**".

Page 16, line 23, delete "Sec. 26." and insert "**Sec. 27.**".

Page 16, line 24, delete "24(f)" and insert "**25(f)**".

Page 16, line 26, delete "Sec. 27." and insert "**Sec. 28.**".

Page 17, line 3, delete "Sec. 28. (a)" and insert "**Sec. 29.**".

Page 17, delete lines 11 through 25.

Page 17, line 26, delete "Sec. 29." and insert "**Sec. 30.**".

Page 17, line 31, delete "30." and insert "**31.**".

Page 17, line 31, delete "covered" and insert "**high cost home**".

Page 17, line 34, delete "covered" and insert "**high cost home**".

Page 17, line 38, delete "covered" and insert "**high cost home**".

Page 17, between lines 39 and 40, begin a new paragraph and insert:

**"Sec. 32. (a) This chapter does not apply to any bank, trust company, savings and loan, savings bank, or credit union that is chartered under the laws of Indiana to the extent federal law precludes or preempts the application of the provisions of this chapter to any federally chartered bank, trust company, savings and loan, savings bank, or credit union, respectively.**

**(b) The federal preclusion or preemption applies only to the same type of state chartered entity as the federally chartered entity affected.**

**(c) The provisions of this chapter are applicable to home loan brokers for any loan originated or brokered by the broker that is originally funded by any other state or federally chartered bank, trust company, savings and loan, savings bank, or credit union."**

Page 20, between lines 30 and 31 begin a new paragraph and insert:

**"SECTION 6. [EFFECTIVE JULY 1, 2003] (a) There is appropriated to the legislative council seventy-five thousand dollars (\$75,000) from the fee revenue credited to the mortgage fraud unit under IC 24-4-6.5-29, as added by this act, for its use in contracting with an independent organization to conduct a study of predatory lending and the causes of the high rate of foreclosure in Indiana during the years 2001, 2002 and 2003 beginning July 1, 2004, and ending June 30, 2005.**

**(b) The money appropriated by this SECTION does not revert to the state general fund at the close of any state fiscal year but remains available to the legislative council until the purpose for which it was appropriated is fulfilled.**

**(c) The results of the study shall be reported in writing to the**



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legislative council not later than December 31, 2005. The report is a public record.

**(d) This SECTION expires January 1, 2006.**

SECTION 6. [EFFECTIVE JANUARY 1, 2006] **(a) As used in this SECTION, "committee" refers to the interim study committee on mortgage lending policies established by subsection (b).**

**(b) There is established the interim study committee on mortgage lending policies. The committee shall study predatory lending and the high rate of foreclosure in Indiana.**

**(c) The committee shall operate under the policies governing study committees adopted by the legislative council.**

**(d) The affirmative votes of a majority of voting members appointed to the committee are required for the committee to take action on any measure, including final reports.**

**(e) This SECTION expires December 31, 2006."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1655 as printed February 28, 2003.)

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1655, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 7, reset in roman "two".

Page 3, line 7, delete "three".

Page 3, line 7, reset in roman "(\$200);"

Page 3, delete line 8.

Page 4, between lines 15 and 16, begin a new paragraph and insert:  
 "SECTION 3. IC 23-2-5-10, AS AMENDED BY P.L.14-2000, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) **Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule adopted or an order issued under this chapter, the commissioner may investigate and may issue:**

**(1) with a prior hearing if there exists no substantial threat of immediate irreparable harm; or**

**(2) without a prior hearing if there exists a substantial threat of immediate irreparable harm;**

**orders and notices the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.**

**(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a)(2), the commissioner shall promptly notify the respondent:**

**(1) that the order or notice has been issued;**

**(2) of the reasons the order or notice has been issued; and**

**(3) that upon the receipt of a written request the matter will be set down for a hearing to commence within forty-five (45) business days after receipt of the request unless the respondent consents to a later date.**

**If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may**

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**modify or vacate the order or extend it until final determination.**

(c) The commissioner may deny, suspend, or revoke the license of a licensee or the registration of a registrant if the licensee or the registrant:

- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) is insolvent;
- (3) has violated any provision of this chapter;
- (4) has knowingly filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact or if a representation becomes false after the filing but during the term of a license or certificate of registration as provided in subsection ~~(e)~~; **(g)**; or
- (5) has been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit.

~~(b)~~ **(d)** The commissioner may not enter a final order denying, suspending, or revoking the license of a licensee or the registration of a registrant without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence within fifteen (15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

~~(e)~~ **(e)** IC 4-21.5 does not apply to a proceeding under this section.

~~(d)~~ **(f)** If:

- (1) a licensee desires to have a previously unregistered employee begin engaging in origination activities; or
- (2) an individual who was previously registered under this chapter is employed by another licensee who desires to have the registrant engage in origination activities;

the employer licensee shall, within fifteen (15) days after the employee

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first conducts origination activities, submit to the commissioner, on a form prescribed by the commissioner, notice of the registrant's employment. If the employee has not previously been registered, the licensee shall submit evidence that the employee has completed the education requirements of section 21 of this chapter.

(g) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of a change in material fact or statement."

Page 5, delete lines 16 through 42, begin a new paragraph and insert:

"SECTION 4. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

#### **ARTICLE 4.8. INDIANA FAIR LENDING ACT**

##### **Chapter 1. Consumer Protections**

**Sec. 1. (a) Except as provided in subsection (c), this article does not apply to a bank, trust company, savings and loan, savings bank, or credit union that is chartered under the laws of Indiana to the extent federal law precludes, preempts, or has been determined to preclude or preempt this article to a federally chartered bank, trust company, savings and loan, savings bank, or credit union.**

**(b) Any federal preclusion or preemption under subsection (a) applies to a state chartered entity only as it applies to the same type of federally chartered entity.**

**(c) The requirements of this article apply to a mortgage broker who originates or brokers a loan that is initially funded by any state or federally chartered bank, trust company, savings and loan, savings bank, or credit union.**

**Sec. 2. (a) The definitions in this section apply throughout this article.**

**(b) "Affiliate" means any entity that controls, is controlled by, or is under common control with another entity, as determined under the Federal Bank Holding Company Act (12 U.S.C. 1841 et. seq.), as amended. The term does not include an entity whose**

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predominant business is providing tax deferred defined contribution pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code.

(c) "Bona fide discount points" means loan discount points that:

- (1) are knowingly paid by the borrower or on behalf of the borrower;
- (2) are paid for the express purpose of lowering the interest rate; and
- (3) in fact result in a bona fide reduction of the interest rate or time-price differential applicable to the loan.

The amount of interest rate reduction purchased by the discount points must be reasonably consistent with established norms and practices for mortgage market transactions.

(d) "Bridge loan" means temporary or short term financing with a maturity of less than eighteen (18) months that requires payments of interest only until the entire unpaid balance is due and payable.

(e) "Covered loan" means a consumer credit mortgage loan transaction other than an open end credit plan or a reverse mortgage in which:

- (1) the borrower is a natural person;
- (2) the debt is incurred by the obligor primarily for personal, family, or household purposes;
- (3) the loan is secured by a mortgage on residential real property or by collateral that has a mortgage lien interest in residential real property, and the residential real property is or will be occupied by the obligor as the obligor's principal dwelling; and
- (4) the terms of the loan provide:
  - (A) that the loan transaction, including a residential mortgage transaction (as defined in 12 CFR 226.2(a)(24)) at the time the loan is consummated is considered a mortgage under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. 1602(aa) and regulations adopted by the Federal Reserve Board, including 12 CFR 226.32; or
  - (B) for total points and fees payable by the borrower at or before the loan closing, exceed six percent (6%) of the total loan amount.

(f) "Lender" means any individual or entity that in any twelve (12) month period originates one (1) or more covered loans. The individual or entity to which the covered loan is initially payable,



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either on the face of the note or contract or by agreement when there is no note or contract, is considered to be the lender.

(g) "Mortgage broker" means a person, except for an employee or exclusive agent of a lender, who, for compensation, brings an obligor and a lender together to obtain a covered loan.

(h) "Municipality" means a county, city, town, or township.

(i) "Ninety (90) day period" means the period beginning on the day notice is provided under section 3 of this chapter and ending ninety (90) days later.

(j) "Obligor" means each obligor, co-obligor, cosigner, or guarantor obligated to repay a covered loan.

(k) "Political subdivision" means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity.

(l) "Servicer" has the same meaning provided in Section 2605(i)(2) of the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et. seq., as amended.

(m) "Total points and fees payable by the borrower at or before the loan closing" means points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004). However, total points and fees payable by the borrower at or before closing excludes not more than two (2) bona fide discount points.

**Sec. 3. A covered loan is subject to the following limitations:**

(1) A covered loan may not require a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments unless the a payment becomes due and payable at least one hundred twenty (120) months after the date of the loan. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(2) A covered loan may not contain a call provision that permits the lender, in the lender's sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated:

(A) by default;

(B) under a due on sale provision;



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(C) where there is fraud or material misrepresentation by an obligor in connection with the loan; or

(D) where there is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in the security for the loan.

(3) A covered loan may not require a payment schedule with regular periodic payments that cause the principal balance to increase. This does not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(4) A covered loan may not require any increase in the interest rate as a result of a default. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the loan agreement, provided the change in the interest rate is not occasioned by the default or a permissible acceleration of the indebtedness.

(5) A covered loan may not include terms under which more than two (2) periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(6) Prepayment fees are subject to the following limitations:

(A) A prepayment fee or penalty is permitted only during the first twenty-four (24) months after the date of execution of a covered loan.

(B) A lender may not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment fee. The terms of the offer must be in writing and initialed by the borrower. The offer must be clearly labeled in large bold type and must include the following disclosure:

**"LOAN PRODUCT CHOICE**

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(C) A prepayment fee or penalty may not be charged on a refinancing of a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of the refinancing.

(D) A prepayment fee or penalty may not exceed two percent (2%) of the net unpaid balance as of the date of the prepayment.

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(7) A lender shall not make a covered loan subject to a mandatory arbitration clause if the clause is oppressive, unfair, unconscionable, or substantially in derogation of the rights of the obligor. It is presumed that an arbitration clause that complies with the standards of the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on July 1, 2003 does not violate this subdivision.

Sec. 4. (a) A lender may not make a covered loan unless the lender or a mortgage broker has given the following notice (or a substantially similar notice) in writing to the obligor within a reasonable time of determining that the loan would result in a covered loan but not later than the time the notice is required under the notice provision contained in 12 CFR 226.31(c), as amended.

**"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE**

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit history and financial circumstances, your earnings history, the amount of your home's value that you wish to borrow, and the type of property that will secure your loan. The loan rate and fees could also vary based on which lender or mortgage broker you select.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender for information on contacting the Indiana housing finance authority established under IC 5-20-1-3 or call the United States Department of Housing and Urban Development's counseling hotline at \_\_\_\_\_ (insert telephone number) or go to \_\_\_\_\_ (insert web address) for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you also should remember that you may face serious financial risks if you use this loan to pay off credit card debts and other



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debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors."

(b) A lender or mortgage broker has met its obligation to provide the disclosure described in subsection (a) if the consumer provides the lender or mortgage broker with a signed acknowledgment of receipt of a copy of the notice set forth in subsection (a).

(c) A lender who originates a covered loan may not extend credit to an obligor based on the obligor's collateral without regard to the obligor's ability to repay, including the obligor's current or expected income, current obligations, and employment.

(d) A lender will be presumed to have violated subsection (c) if the lender makes a covered loan without verifying or documenting the obligor's repayment ability.

(e) Any expected income from any source other than the obligor's equity in the property securing the covered loan, including regular salary or wages, gifts, expected retirement payments, or income from self employment may be considered when evaluating the obligor's ability to repay. A lender may verify and document an obligor's income and current obligations through any reliable source that provides the lender with a reasonable basis for believing there are sufficient funds to support the covered loan. Reliable sources include, but are not limited to, credit reports, tax returns, pension statements, and payment records for employment income.

(f) In the case of a loan based on the borrower's statement of the borrower's income, the reasonable basis for believing there are sufficient funds to support the covered loan may be the income stated by the consumer, as well as other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection

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with loans of that type. A lender may not knowingly or willfully originate a covered loan as a loan based on the borrower's statement of the borrower's income with the intent to evade this subsection.

(g) A lender may not, within two (2) years after having made a covered loan, charge an obligor points or fees in connection with the covered loan if the proceeds of the covered loan are used to refinance an existing covered loan for which points and fees were charged. However, points and fees may be charged on any proceeds of a covered loan that are in excess of the amount refinanced on the existing covered loan.

(h) A lender may not finance, directly or indirectly, into a covered loan or finance to the same obligor within thirty (30) days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan. Any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance premium calculated and paid on a monthly or other periodic basis may not be considered financed by the lender. This prohibition does not include contracts issued by a government agency or private mortgage insurance company to insure the lender against loss caused by an obligor's default.

(i) A lender may not replace or consolidate a zero (0) interest rate or other subsidized low rate loan made by a governmental or nonprofit lender with a covered loan within the first ten (10) years of the subsidized low rate loan unless the current holder of the loan consents in writing to the refinancing. For purposes of this subsection, a "subsidized low rate loan" is a loan that carries a current interest rate at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a subsidized low rate loan.

(j) A lender may not pay a contractor under a home improvement contract from the proceeds of a covered loan other than by an instrument payable to the obligor or jointly to the obligor and the contractor or, at the election of the obligor, through a third party escrow agent in accordance with terms established in a written agreement signed by the obligor, the

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lender, and the contractor before the disbursement of funds to the contractor.

(k) A lender may not recommend or encourage default on an existing loan or other debt before or in connection with the closing or planned closing of a covered loan that refinances all or any part of the existing loan or debt.

(l) A lender may not charge a fee for informing or transmitting to a person the balance due to pay off a covered loan or to provide release upon prepayment. A lender must provide a payoff balance not later than seven (7) business days after the request is received by the lender.

(m) A lender may not charge an obligor fees or other charges to modify, renew, extend, or amend a covered loan or to defer any payment due under the terms of a covered loan.

(n) A person may not knowingly and intentionally make, propose, or solicit fraudulent, false, or misleading statements on any mortgage document or any document related to a mortgage, including a mortgage application, real estate appraisal, or real estate settlement or closing document. For purposes of this subsection, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

(o) Except as provided in IC 24-4.5-3-203.5, a lender may not charge a late payment fee on a covered loan.

(p) A lender may not knowingly or intentionally structure or restructure a closed-end covered loan as an open-end credit transaction for the purpose of evading the requirements of this article.

(q) A lender may not knowingly or intentionally divide a covered loan into separate parts for the purpose of evading the requirements of this article.

Sec. 5. A servicer of a covered loan shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection does not prevent a servicer from agreeing with the obligor not to report specified payment history information in the event of a resolved or unresolved dispute with an obligor and does not apply to covered loans held or serviced by a lender for less than ninety (90) days.

Sec. 6. A lender making a covered loan that has the right to foreclose must use the judicial foreclosure procedures of the state

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in which the property securing the loan is located. The obligor has the right to assert in the proceeding the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including a claim or defense based on a violation of this article. Nothing in this section is intended or shall be construed to allow any claim or defense otherwise barred by any statute of limitation or repose.

**Sec. 7.** A lender may not discriminate against an applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, or age, provided that the applicant has the ability to contract.

#### **Chapter 2. Enforcement and Mortgage Fraud Unit**

**Sec. 1. (a)** The attorney general may enforce this article for any violation occurring within five (5) years after the making of the covered loan.

**(b)** As used in this chapter, "appropriate restitution" means the reimbursement by the lender of any points, fees, interest, or other payments that were made to the lender from the obligor and which are necessary to restore the obligor to the same position as the obligor would have been in had the loan originally been made according to the adjusted terms of section 7 of this chapter.

**(c)** As used in this chapter, "fraud" means an act or practice as part of a consumer credit mortgage transaction involving real property located in Indiana in which a lender:

- (1)** knowingly or intentionally makes a material misrepresentation to a borrower;
- (2)** knowingly or intentionally conceals or obscures material information from the borrower regarding the terms or conditions of the transaction;
- (3)** knowingly or intentionally consummates the credit mortgage transaction with the knowledge that the borrower will be unable to successfully fulfill the terms or conditions of the mortgage loan based upon the borrower's finances at the time of the consummation;
- (4)** knowingly or intentionally includes terms or conditions in the mortgage loan that substantially increase the likelihood of default; or
- (5)** violates this article.

The applicable provisions of this section also apply to a mortgage broker or real estate appraiser who assists in or is a part of the consumer credit mortgage transaction.

**(d)** As used in this chapter, "unit" refers to the mortgage fraud



unit established by this section.

(e) The mortgage fraud unit is established in the office of the attorney general.

(f) The attorney general shall hire qualified individuals to implement the responsibilities of the unit, subject to the budget agency's approval.

(g) The unit shall do the following:

- (1) Investigate allegations of fraud in connection with mortgage loans.
- (2) Institute appropriate administrative and civil actions to redress fraud in connection with mortgage loans.
- (3) Cooperate with federal, state, and local law enforcement agencies in the investigation of fraud in connection with mortgage loans.
- (4) Cooperate with appropriate federal and state agencies in the prosecution of criminal violations involving fraud in connection with mortgage loans.

(h) The unit shall cooperate with the following to implement this chapter:

- (1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.
- (2) The department of financial institutions.
- (3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.
- (4) The securities division of the office of the secretary of state.
- (5) The supreme court disciplinary commission with respect to attorney misconduct.

Sec. 2. The attorney general may file complaints with any of the agencies listed in section 1(f) of this chapter to implement this chapter.

Sec. 3. The establishment of the unit and its powers does not limit the jurisdiction of any agency described in section 1(f) of this chapter.

Sec. 4. (a) The attorney general and an investigator of the unit may do any of the following when investigating alleged fraud in connection with mortgage lending:

- (1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.
- (2) Issue and serve a subpoena for the appearance of any



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person before the attorney general to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

(b) The attorney general may make recommendations to the general assembly for appropriate legislation to address fraud in connection with mortgage lending.

(c) The unit shall maintain an education program to inform consumers of mortgage loans about fraud in connection with mortgage lending. The unit shall cooperate with the agencies listed in section 1(f) of this chapter to develop and implement the education program required by this subsection.

Sec. 5. The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) void or limit the application of obligations that violate this article;
- (4) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (5) impose a civil penalty of not more than two thousand dollars (\$2,000) per violation.

Sec. 6. (a) A person who violates an injunction issued under section 5 of this chapter must pay a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation.

(b) The court that issues an injunction under section 5 of this chapter retains jurisdiction over a proceeding seeking imposition of a civil penalty under this section.

(c) The attorney general, acting in the name of the state, has the exclusive right to petition for imposition of a civil penalty under this section.

(d) If a court determines that a person:

- (1) has violated an injunction issued under section 5 of this chapter; and
- (2) must pay a civil penalty;

the court shall also require the person to reimburse the state for reasonable costs related to bringing an action under this section.

Sec. 7. A lender of a covered loan who in good faith fails to comply with the requirements of IC 24-4.8-1 does not violate this article if:

- (1) not later than sixty (60) days after the loan closing the

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obligor is notified of the lender's failure to comply with the requirements of IC 24-4.8-1. The lender must make appropriate restitution to the obligor, and the terms of the loan must be adjusted, at the choice of the obligor, so that the loan:

- (A) complies with the requirements of IC 24-4.8-1; or
- (B) is no longer considered a covered loan under this article and the adjusted terms of the loan are beneficial to the obligor; or

(2) the failure to comply was unintentional and resulted from an error notwithstanding the maintenance of procedures reasonably adopted to avoid noncompliance. The lender shall, not later than sixty (60) days after the discovery of noncompliance, notify the obligor of the noncompliance, make appropriate restitution to the obligor, and adjust the terms of the loan, at the choice of the obligor, so that the loan:

- (A) complies with the requirements of IC 24-4.8-1; or
- (B) is no longer considered a covered loan under this article and the adjusted terms of the loan are beneficial to the obligor.

Sec. 8. (a) If a person suffers a pecuniary loss as a result of a violation of this article, the person may bring a civil action for the following:

- (1) Actual damages.
- (2) The costs of the action.
- (3) A reasonable attorney's fee.

(b) An action under this section may not be brought, commenced, or maintained unless the action is filed within five (5) years after the date the person knew or by the exercise of reasonable diligence should have known of the violation of this article.

(c) An award of actual damages under subsection (a)(1) has priority over a civil penalty imposed under this chapter.

### Chapter 3. State Power to Regulate Lending

Sec. 1. (a) The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

(b) Political subdivisions may not enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities,



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including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices, including interest rates and fees, or from imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

- (1) are subject to the jurisdiction of the department of financial institutions;
- (2) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;
- (3) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivision (1), (2), (4), or (5);
- (4) are chartered by the United States Congress to engage in secondary market mortgage transactions; or
- (5) are created by the Indiana housing finance authority.

#### **Chapter 4. Revenue and Appropriations**

**Sec. 1.** The fees assessed by the county recorder to record a mortgage are increased by three dollars (\$3) per mortgage filing. The county recorder shall retain fifty cents (\$0.50) of the fee increase. The revenue from this fee increase shall be distributed as follows:

- (1) Fifty percent (50%) to the attorney general for use in mortgage fraud enforcement under section 3 of this chapter.
- (2) Fifty percent (50%) to the Indiana housing finance authority under IC 5-20-1-3 for mortgage literacy training and programs under section 2 of this chapter.

**Sec. 2.** The fee allocation under section 1(2) of this chapter shall be distributed on a quarterly basis to the Indiana housing finance authority for the purpose of identifying, promoting, and funding mortgage literacy training and programs throughout the state. Such training and programs shall cover topics that include home buying and mortgage lending.

**Sec. 3.** The fee allocation under section 1(1) of this chapter shall be distributed on a quarterly basis to the mortgage fraud unit created within the office of the attorney general by

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**IC 24-4.8-2-1(c).**

**Sec. 4. (a)** An allocation of seventy-five thousand dollars (\$75,000) consisting of the increased fees under this chapter shall be made to the legislative services agency before any fee revenue may be allocated to the mortgage fraud unit of the attorney general's office or the department of education. The seventy-five thousand dollar (\$75,000) allocation shall be used to contract with the Kelly School of Business at Indiana University to conduct a study of the causes of the high rate of foreclosure in Indiana during 2001 and 2002.

**(b)** The results of the study shall be reported in writing to the legislative services agency not later than December 31, 2004. The legislative services agency shall distribute the report to the legislative council, the department of financial institutions, and the attorney general.

**Chapter 5. Assignee Liability**

**Sec. 1. (a)** Except as provided in subsection (b), a person who purchases or who is assigned a covered loan from a lender is subject to the same claims and entitled to the same defenses as the lender.

**(b)** If an action is commenced:

- (1)** by the mortgage fraud unit; or
- (2)** by an individual under IC 24-4.8-2-8;

alleging the covered loan does not meet the requirements of IC 24-4.8-1, the person may not be held liable for violations of this article if the person establishes by a preponderance of the evidence that a reasonable person exercising ordinary due diligence could not have determined at the time the covered loan was purchased or assigned that the covered loan violated this article.

**Sec. 2.** If it is determined that a person who purchases or who is assigned a covered loan is liable for civil penalties or amounts under IC 24-4.8-2-8, the total amount of liability may not exceed the:

- (1)** remaining amount of obligor indebtedness; and
- (2)** total amount paid by the obligor in connection with the covered loan.

**SECTION 3.** [EFFECTIVE JULY 1, 2003] The provisions of IC 24-4.8, as added by this act, are severable in the manner provided by IC 1-1-1-8(b).

**SECTION 4.** [EFFECTIVE JULY 1, 2003] IC 24-4.8, as added by this act, applies only to loans originated after December 31, 2003."

Delete pages 6 through 21.



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Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to HB 1655 as reprinted March 4, 2003.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Drozda be added as cosponsor of Engrossed House Bill 1655.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1655 be amended to read as follows:

Page 4, line 39, delete "forty-five (45)" and insert "**fifteen (15)**".

(Reference is to EHB 1655 as printed April 1, 2003.)

CLARK

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1655 be amended to read as follows:

Page 19, line 28, delete "increase." and insert "**increase for the county recorder's records perpetuation fund established under IC 36-2-7-10.**".

Page 19, line 28, after "The" insert "**remaining**".

Page 19, line 28, after "distributed" and insert "**to the state auditor's office. The state auditor shall distribute the revenue from this increase**".

(Reference is to EHB 1655 as printed April 1, 2003.)

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